

HONG KONG

The law of the British Crown Colony of Hong Kong relating to financial disclosure by its legislators has been dealt with in a previous report. Hong Kong also has provisions for the disclosure of personal financial affairs by its government officials. In this regard, it is noteworthy that the Public Service of Hong Kong includes the staff for certain activities which are usually not part of the civil service. In other administrations, for example, the police, the staff of government hospitals, and staff of public works and utilities are not normally considered to be civil servants. In Hong Kong, however, the Medical and Health Department, the Public Works Department, the Urban Services Department, and the Royal Hong Kong Police Force together constitute more than sixty per cent of the total strength of the Public Service.^{1/} This may be one reason for the stringency of the provisions contained in the Prevention of Bribery Ordinance, which replaced the older Prevention of Corruption Ordinance.

Under Section 10, subsection (1) of the Prevention of Bribery Ordinance, No. 102 of 1970, any person who is or has been a Crown servant and who maintains a standard of living above that which is commensurate with his present or past official emoluments, or who is in control of pecuniary resources or property disproportionate

^{1/} Hong Kong; Report for the year 1971, Hong Kong: Government Press, 1972, p. 245.

to his present or past official emoluments, is guilty of an offense under this Ordinance, unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control.

Subsection (2) of the same section provides that

No prosecution for an offence under subsection (1) shall be instituted without the consent in writing of the Attorney General, who shall, before consenting to the institution of a prosecution against a person for such an offence, inform that person that a prosecution against him for such an offence is under consideration and give him an opportunity of making representations in writing to the Attorney General. ^{2/}

"Crown servant" is defined in Section 2 of the Ordinance as meaning a person holding an office of emolument, whether permanent or temporary, under the Crown in right of the Government. The penalties for an offense under this portion of the ordinance are, on conviction on indictment, a fine of one hundred thousand Hong Kong dollars and imprisonment for seven years, and on summary conviction, a fine of fifty thousand Hong Kong dollars and imprisonment for three years. The offender shall be ordered to pay to whatever person or public body and in whatever manner as the court

^{2/} 11 Laws of Hong Kong ch. 201 (rev. ed. 1970), 8.

directs, the amount or value of any advantage that was received by him, or any part of it, as the court may specify.

In addition to the above, the Prevention of Bribery Ordinance endows the Attorney General of Hong Kong with certain special powers of investigation. Section 14 lists some of these powers, as below:

14. (1) In the course of any investigation into or proceedings relating to, an offence alleged or suspected to have been committed by any person under this Ordinance, the Attorney General may by written notice require --

(a) such person to furnish to the Director^{3/} a statutory declaration or, as the Attorney General sees fit, a statement in writing, enumerating --

(i) the property, being property in such categories or classes of property, movable or immovable, as may be specified in such notice, belonging to or possessed by, or which at any time during the year immediately preceding the date of such notice or during such shorter period as may be specified in such notice belonged to or was possessed by, such person, his agents or trustees, specifying in respect of each property enumerated whether it is or was possessed jointly (and, if so, with whom) or severally; and specifying the date upon which each such property was acquired and whether by purchase, gift, bequest, inheritance or otherwise, and where it was acquired by purchase, specifying the consideration paid therefor; and in respect of any property enumerated which has been disposed of, whether by sale, gift or otherwise,

^{3/} "Director" is defined in Section 2 as meaning the person appointed by the Governor to be in charge of the Anti-Corruption Office.

at any time during the year immediately preceding the date of the notice or such shorter period as aforesaid, specifying how and to whom the same was disposed of and, where it was disposed of by sale, specifying the consideration given therefor;

(ii) all expenditure incurred by such person in respect of himself, his spouse, parents or children with regard to living expenses and other private expenditure during any period specified in such notice (not, however, being a period commencing earlier than one year from the date of the notice);

(iii) all liabilities incurred by such person, his agents or trustees, at such time or during such period as may be specified in such notice (not, however, being a time or a period commencing earlier than one year from the date of the notice), and specifying in respect of each such liability whether it was incurred jointly (and, if so, with whom) or severally;

- (b) such person to furnish to the Director a statutory declaration or, as the Attorney General sees fit, a statement in writing of any money or other property sent out of the Colony by him or on his behalf during such period as may be specified in the notice;
- (c) any other person to furnish to the Director a statutory declaration or, as the Attorney General sees fit, a statement in writing enumerating the property, being property in such categories or classes of property, movable or immovable, as may be specified in such notice, belonging to or possessed by him, if the Attorney General believes that such information may assist the investigation or proceedings;

- (d) any other person whom the Attorney General believes to be acquainted with any facts relevant to such investigation or proceedings to furnish to the Director all information in his possession respecting such matters as are specified in the notice or, as the Attorney General sees fit, to appear before the Director or such other person specified in the notice and to answer orally on oath or affirmation any questions relevant thereto; and, on demand by the Director or such other person, to produce or deliver or otherwise furnish to him the original or a copy of any document in his possession or under his control which, in the opinion of the Director or such other person, may be relevant to such investigation or proceedings; for the purposes of this paragraph the Director or such other person shall have authority to administer any oath or take any affirmation;
- (e) the person in charge of any public body or any department, office or establishment of any public body to produce or furnish to the Director any document or a copy, certified by the person in charge, of any document which is in his possession or under his control;
- (f) the manager of any bank to give to the Director copies of the accounts of such person or of his spouse, parents or children at the bank as shall be named in the notice.^{h/}

The penalty for non-compliance with such a notice within the time specified, without a reasonable excuse, is a fine of twenty thousand Hong Kong dollars and imprisonment for one year.

^{h/} 11 Laws of Hong Kong ch. 201, 11-12.